

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

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4 UNITED STATES OF AMERICA,) CR NO. 22-00106 JAO
5 Plaintiff,) Honolulu, Hawaii
6 vs.) September 8, 2023
7 (01) KELIINKOA KAIMANA FOSTER) CHANGE OF PLEA HEARING
YOUNG aka "KELII,"
8 Defendant.
9 _____)

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12 TRANSCRIPT OF PROCEEDINGS
13 BEFORE THE HONORABLE JILL A. OTAKE
UNITED STATES DISTRICT COURT JUDGE

14

APPEARANCES:

15 For the Government: WAYNE A. MYERS, AUSA
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18 For the Defendant (01) CATHERINE P. GUTIERREZ, ESQ.
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25 Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

1 FRIDAY, SEPTEMBER 8, 2023

9:38 O'CLOCK A.M.

2 COURTROOM MANAGER: Criminal Number 21 (sic), dash,
3 106 JAO, United States of America versus defendant number (1)
4 Keliikoa Kaimana Foster Young, also known as Kelii.

5 This case has been called for a change of plea
6 hearing.

7 Counsel, please make your appearances for the record.

8 MR. MYERS: Good morning, Your Honor. Wayne Myers on
9 behalf of the United States.

10 THE COURT: Good morning.

11 MS. GUTIERREZ: Good morning, Your Honor. Catherine
12 Gutierrez on behalf of Mr. Kelii Foster Young, who's also
13 present.

14 THE COURT: Good morning.

15 THE DEFENDANT: Good morning.

16 THE COURT: You may all be seated.

17 Sir, so just so I know, is your last name Foster
18 Young?

19 THE DEFENDANT: It's Foster.

20 THE COURT: It's Foster?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. So you go by Keliikoa Kaimana
23 Foster?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. Thank you.

1 So Mr. Foster, let me tell you, I am sure that
2 Ms. Gutierrez has done a good job of explaining to you what you
3 can expect today, but let me share a few things with you.

4 The most important thing for me today is to make sure
5 that you understand what's going on, right?

6 THE DEFENDANT: (Nods.)

7 THE COURT: That you're entering this plea knowingly,
8 voluntarily, and intelligently. I have a bunch of questions to
9 ask you. They're basically from a script. And some of them
10 may sound pretty formal, but I want you to know that I am
11 listening very carefully; and if at any time you have any
12 questions of me, just interrupt me and it's fine, and you can
13 talk to Ms. Gutierrez.

14 THE DEFENDANT: Okay.

15 THE COURT: All right?

16 So with that, I'm going to ask Ms. Mizukami to swear
17 you in.

18 COURTROOM MANAGER: Mr. Foster, if you could please
19 rise and raise your right hand.

20 KELIIKOA KAIMANA FOSTER YOUNG, SWORN

21 THE DEFENDANT: Yes.

22 COURTROOM MANAGER: Thank you.

23 THE COURT: All right. Yes, you may be seated.

24 THE DEFENDANT: (Complies.)

25 THE COURT: Thank you.

1 So Mr. Foster, you are now under oath, which means
2 that if you say anything that's false, that can be used against
3 you in a future prosecution for perjury or false statement. Do
4 you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: I need some background information about
7 you to make sure that we have the right person here today and
8 also to make sure that you understand what's happening.

9 So can you tell me your full legal name?

10 THE DEFENDANT: Keliikoa Kaimana Foster.

11 THE COURT: And how old are you?

12 THE DEFENDANT: 33.

13 THE COURT: How far did you go in school?

14 THE DEFENDANT: Ninth grade.

15 THE COURT: Okay. Did you get your GED?

16 THE DEFENDANT: No.

17 THE COURT: Okay. You obviously speak English. Can
18 you read English?

19 THE DEFENDANT: Yes.

20 THE COURT: Is English your native language?

21 THE DEFENDANT: Yes.

22 THE COURT: Were you born in the United States?

23 THE DEFENDANT: Yes.

24 THE COURT: What is the most recent job you've had?

25 THE DEFENDANT: I'm a operator at Paradine

1 (verbatim).

2 THE COURT: What is --

3 THE DEFENDANT: Construction.

4 THE COURT: Paradigm?

5 THE DEFENDANT: Yes.

6 THE COURT: So what does an operator do?

7 THE DEFENDANT: I pretty much dig like the sewer,
8 utilities, water, drains.

9 THE COURT: So for that job I assume you have to read
10 English --

11 THE DEFENDANT: Yes.

12 THE COURT: -- and speak English; is that correct?

13 THE DEFENDANT: Mm-hmm. Yes.

14 THE COURT: Okay. Have you had any illegal drugs or
15 had any alcohol in the last 24 hours?

16 THE DEFENDANT: No.

17 THE COURT: Are you taking any non-prescribed drugs
18 that could affect your ability to think clearly?

19 THE DEFENDANT: No.

20 THE COURT: Do you feel that you are of a sound mind
21 today and can make good decisions for yourself today?

22 THE DEFENDANT: (Nods.)

23 THE COURT: I'm sorry. So --

24 THE DEFENDANT: Yes.

25 THE COURT: -- do you think you're --

1 THE DEFENDANT: Yes. Oh, sorry, yes.

2 THE COURT: Okay. So let me just make that one clear
3 again for our record.

4 So do you feel that you can think clearly today?

5 THE DEFENDANT: Yes.

6 THE COURT: And make good decisions for yourself?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Do you understand that you
9 are here for a hearing regarding your decision to plead guilty
10 in this case?

11 THE DEFENDANT: Yes.

12 THE COURT: Have you had enough time to talk with
13 Ms. Gutierrez about this decision?

14 THE DEFENDANT: Yes.

15 THE COURT: And are you satisfied with her
16 representation of you?

17 THE DEFENDANT: Yes.

18 THE COURT: Other than what is in the plea agreement,
19 has anyone promised you anything in order to get you to plead
20 guilty?

21 MS. GUTIERREZ: (Confers off the record.)

22 THE DEFENDANT: No.

23 THE COURT: Has anyone threatened you, or anyone
24 else, or forced you in any way to plead guilty?

25 THE DEFENDANT: No.

1 THE COURT: Are you pleading guilty of your own free
2 will because you are in fact guilty of this crime?

3 THE DEFENDANT: Yes.

4 THE COURT: Ms. Gutierrez, do you have any reason to
5 doubt your client's competence to enter a plea today?

6 MS. GUTIERREZ: No, Your Honor.

7 THE COURT: Do you believe that this plea is
8 voluntary?

9 MS. GUTIERREZ: Yes.

10 THE COURT: All right. Mr. Foster, I understand that
11 you are pleading guilty today to an indictment. Have you
12 received a copy of the indictment?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you read the charge -- all of the
15 charges against you?

16 THE DEFENDANT: Yes.

17 THE COURT: And actually, Mr. Myers, let me ask you,
18 given that Mr. Foster says that his last name is not Foster
19 Young, what do you intend to do about the fact that he's been
20 charged as -- with the last name of Young also?

21 MR. MYERS: Let me consult with his attorney. We'll
22 figure out what his precise legal name is. I think that might
23 be the issue, because our records reflected that his legal name
24 was Foster Young.

25 THE COURT: Okay. And then I think if there's an

1 error in that, that can be fixed on the docket.

2 MR. MYERS: I'll submit something if that's correct,

3 Your Honor.

4 THE COURT: Great. Okay.

5 So Mr. Foster, if you have the -- do you have a copy
6 of the plea agreement in front of you?

7 THE DEFENDANT: Yes.

8 THE COURT: On occasion I'll be looking at it, and
9 when I do, I'll tell you when I am. So if you look at page 2
10 of the plea agreement, it outlines the charges against you.
11 And I checked it. It is correct, based on what's in the
12 indictment. And so let me go over those with you.

13 You have been charged with conspiracy to distribute
14 and possess with intent to distribute methamphetamine, in
15 violation of 21 U.S.C. sections 846, 841(a)(1), and
16 841(b)(1)(A), in Count 1.

17 In Counts 2 and 4 you have been charged with
18 distribution of methamphetamine, in violation of 21 U.S.C.
19 sections 841(a)(1) and 841(b)(1)(B).

20 In Counts 3, 5, 6 and 7 you have been charged with
21 distribution of methamphetamine, in violation of 21 U.S.C.
22 sections 841(a)(1) and 841(b)(1)(A). And in Count 8 you have
23 been charged with conspiracy to interfere with commerce by
24 robbery, in violation of 18 U.S.C. section 1951(a).

25 Do you understand that those are the charges against

1 you in the indictment?

2 THE DEFENDANT: Yes.

3 THE COURT: And have you received a copy of the
4 indictment and read it?

5 THE DEFENDANT: Yes.

6 THE COURT: And am I correct also that you have
7 entered into a plea agreement with the government?

8 THE DEFENDANT: Yes.

9 THE COURT: Have you read through the entire
10 agreement or had it read to you?

11 THE DEFENDANT: Yes.

12 THE COURT: And have you discussed it with your
13 lawyer?

14 THE DEFENDANT: Yes.

15 THE COURT: Did you have enough time to do so?

16 THE DEFENDANT: Yes.

17 THE COURT: So I don't have, it looks like, a wet
18 signature copy of the plea agreement, but I do have, it looks
19 like, a copy that was signed by you on February 6 of 2023, with
20 some initials by that. Are those your initials?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you initial it today?

23 THE DEFENDANT: Yes.

24 THE COURT: And did you originally sign this plea
25 agreement on February 6th --

1 THE DEFENDANT: Yes.

2 THE COURT: -- of 2023? I'm sorry.

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. And am I right then that by
5 initialing it today you are expressing your commitment to
6 follow by the -- everything contained in this plea agreement?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you feel that you understand the terms
9 of --

10 MS. GUTIERREZ: Judge, I'm sorry.

11 THE COURT: Yes.

12 MS. GUTIERREZ: Just to clarify, there were two pages
13 that was missing, and I think that was the intent with the
14 initials, is to include those two pages, which was in the
15 original, but it was not in the copy that was provided to the
16 Court.

17 THE COURT: All right. So I think then, so the
18 initials were meant to reflect what?

19 MS. GUTIERREZ: That what's being submitted today, as
20 I understand, is different from what was emailed to the Court,
21 which was missing two pages, and to initial that what was being
22 provided to the Court now includes those two pages which were
23 in the original signed memorandum.

24 THE COURT: okay. Who has the original? Does
25 anybody have the original?

1 MR. MYERS: I think the original's split, Your Honor,
2 between the two parties. So there was a wet ink version from
3 my office and a wet ink version from the defense. So --

4 MS. GUTIERREZ: okay.

5 THE COURT: Let me talk to Ms. Mizukami for a moment.
6 (Discussion was held off the record.)

7 THE COURT: So Mr. Myers, does somebody have a wet
8 ink copy?

9 MR. MYERS: There is, I believe, in my office, a wet
10 ink copy with my wet ink signature and Mr. Sorenson's, who's
11 the criminal chief's wet signature, and then Ms. Gutierrez has
12 a wet ink copy as well.

13 MS. GUTIERREZ: of our --

14 MR. MYERS: Her signature --

15 MS. GUTIERREZ: -- signature.

16 THE COURT: Got it.

17 why don't we do this, after this hearing, if you
18 could, Ms. Gutierrez, give Mr. Myers your wet ink signature
19 just so somebody has all of it in one place in the event that
20 we need it.

21 I mean, we typically do scan and file these in the
22 record, but in case there's any dispute over that, if we could
23 just house those all in one place, I think that would be
24 helpful.

25 MR. MYERS: Will do, Your Honor.

1 THE COURT: All right. Thank you.

2 Turning back to the terms of the plea agreement, let
3 me ask you to confirm again, Mr. Foster, that this is the
4 entire agreement between you and the government.

5 THE DEFENDANT: Oh, yeah.

6 THE COURT: I'm sorry?

7 MS. GUTIERREZ: This is --

8 THE DEFENDANT: Okay. Oh, yeah.

9 THE COURT: Do you understand that I am not required
10 to accept the plea agreement and I may reject it?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that the stipulations
13 in the plea agreement are between you and the government only
14 and that I am not required to follow them?

15 THE DEFENDANT: Yes.

16 THE COURT: I will ask Mr. Myers then to tell us
17 generally, please, what the terms are of this plea agreement.

18 MR. MYERS: Yes, Your Honor. The essential terms of
19 the plea agreement, I'll start with paragraph 4, which is the
20 agreement. The defendant agrees to plead guilty to Count 1 of
21 the information -- that's of the indictment, rather -- which is
22 the conspiracy to distribute and possess with intent to
23 distribute, in violation of 21 U.S.C. sections 846, 841(a)(1),
24 and (b)(1)(A).

25 In return, the government agrees to dismiss after

1 sentencing the charges against the defendant in Counts 2
2 through 7, which charge him with distribution of
3 methamphetamine substantively, as well as Count 8, which
4 charges him with conspiracy to interfere with commerce by
5 robbery.

6 Paragraph 7 of the plea agreement, the defendant
7 acknowledges he understands the penalties to the crime for
8 which he is pleading guilty.

9 In paragraph 8, the defendant admits to certain facts
10 that relate to the count to which he's pleading guilty.

11 In paragraph 10, the parties stipulate that the
12 defendant is responsible for approximately 1,847 grams of
13 methamphetamine, actual, which results in a base offense level
14 of 36 under the sentencing guidelines.

15 The government agrees that the defendant should
16 receive a two-level downward -- downward adjustment for
17 acceptance of responsibility and a third for timely acceptance.

18 In paragraph 11, the parties acknowledged that the
19 stipulations are not binding on the Court.

20 In paragraph 12, the defendant acknowledges he is
21 aware that he has the right to appeal his conviction and the
22 sentence imposed.

23 THE COURT: Paragraph 13.

24 MR. MYERS: My apologies. Yes, correct.

25 And so he in that paragraph agrees to knowingly and

1 voluntarily waive his right to appeal his conviction and any
2 sentence within the guideline range as determined by the Court
3 at the time of sentencing. The defendant also waives his right
4 to challenge his conviction or sentence in any collateral
5 attack, including but not limited to a habeas section 2255
6 motion, but retains the ability to collaterally attack a
7 sentence that is greater than the specified guideline range,
8 and he retains the right to make a claim of ineffective
9 assistance of counsel in a collateral attack.

10 In paragraph 15, the defendant agrees to forfeit
11 property identified in paragraph 3 of the forfeiture notice in
12 the indictment.

13 In paragraph 18, the defendant acknowledges he is
14 aware of and is waiving all of his trial rights.

15 In paragraph 22, the defendant agrees to cooperate
16 fully with the United States. Those are the essential terms of
17 the agreement, Your Honor.

18 THE COURT: All right. Thank you.

19 Ms. Gutierrez, would you agree that those are the
20 essential terms of this plea agreement?

21 MS. GUTIERREZ: Yes.

22 THE COURT: Mr. Foster, do you understand that those
23 are the terms, generally speaking, of this plea agreement?

24 THE DEFENDANT: Yes.

25 THE COURT: I'm now going to ask Mr. Myers to tell us

1 what the penalties are for Count 1 that you're pleading guilty
2 to today.

3 MR. MYERS: Your Honor, the defendant faces a term of
4 imprisonment of not less than ten years and not more than life,
5 a fine of up to ten million dollars, and a term of supervised
6 release of not less than five years and up to life.

7 In addition, the Court must impose a one hundred
8 dollar special assessment for each count. So in this case that
9 will be a one hundred dollar special assessment.

10 The defendant acknowledges that -- and the defendant
11 has forfeiture obligations as well, pursuant to Title 21 as set
12 forth in the indictment.

13 Defendant also faces loss of federal benefits as set
14 forth in page 4 of the plea agreement. Those are the
15 penalties, Your Honor.

16 THE COURT: Thank you.

17 Ms. Gutierrez, do you agree that those are the
18 penalties?

19 MS. GUTIERREZ: Yes.

20 THE COURT: Mr. Foster, do you understand that by
21 pleading guilty today those are the penalties that you face?

22 THE DEFENDANT: Yes.

23 THE COURT: I will now talk to you about the loss of
24 federal benefits that Mr. Myers just mentioned.

25 Do you understand that by pleading guilty today you

1 will be considered to have been adjudged guilty of a felony
2 offense?

3 THE DEFENDANT: Yes.

4 THE COURT: If I accept your plea, that can impact
5 some important civil rights, such as the right to vote, the
6 right to hold public office, the right to serve on a jury, and
7 the right to possess any kind of firearm or ammunition. Do you
8 understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: And do you understand that by giving
11 up -- that you may potentially be giving up these valuable
12 civil rights by entering this plea today?

13 THE DEFENDANT: Yes.

14 THE COURT: Thank you.

15 I will now ask Mr. Myers to tell us what the elements
16 are of this crime, because I need to make sure that you are in
17 fact guilty of it.

18 MR. MYERS: Your Honor, there are three elements.

19 First, that there was an agreement between two or
20 more persons to distribute methamphetamine and possess
21 methamphetamine with the intent to distribute it.

22 Second, that the defendant joined in that agreement
23 knowing of its purpose and intended to help accomplish that
24 purpose.

25 And third, that the conspiracy involved the

1 distribution of 50 grams or more of actual methamphetamine.

2 THE COURT: Ms. Gutierrez, do you agree that those
3 are the elements?

4 MS. GUTIERREZ: Yes.

5 THE COURT: So Mr. Foster, what this means is that
6 those are the elements the government would need to prove
7 beyond a reasonable doubt to a unanimous jury in order for you
8 to be convicted of this crime. And by giving up your right to
9 jury trial today and pleading guilty, you're not going to hold
10 the government to its burden of proof. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: I will now ask Mr. Myers to tell us what
13 the evidence is that the government would be prepared to offer
14 at trial. And if you are going to read from paragraph 8, if
15 you could just let us know.

16 MR. MYERS: That was my intention, Your Honor, if
17 that's acceptable to the Court.

18 THE COURT: That's fine. Thank you.

19 MR. MYERS: At trial, Your Honor, the government
20 would prove each of the following facts beyond a reasonable
21 doubt. I'm beginning at paragraph 8a on page 5 of the
22 memorandum.

23 Between at least September 2020 and continuing
24 through at least July 2021, the defendant had a criminal
25 agreement with his coconspirators, Austin Waiwaiole, Rocky

1 Duque, Travis Dias, and Kaniela Perez, and others, to
2 distribute and possess with the intent to distribute what the
3 defendant knew was methamphetamine, actual, a Schedule II
4 controlled substance, on Oahu, in the District of Hawaii.

5 On or about November 10th, 2020, the defendant agreed
6 with his coconspirator Austin Waiwaiole to distribute
7 approximately 28 grams, actual, of methamphetamine to a drug
8 customer on Oahu.

9 After telling Waiwaiole about the nature of the
10 meeting, i.e., that he was about to meet a drug customer to
11 conduct an illegal drug transaction, Waiwaiole agreed to drive
12 the defendant to meet with the drug customer, and then watched
13 as the defendant conducted the transaction, and returned to
14 Waiwaiole's vehicle with \$650 in illegal proceeds.

15 On or about March 15th, 2021, the defendant agreed
16 with his coconspirators Rocky Duque and Travis Dias to
17 distribute approximately 442 grams of methamphetamine, actual,
18 to a drug customer on Oahu.

19 Dias and the defendant agreed that Dias would bring
20 the methamphetamine to a meeting location and deliver it to a
21 defendant who, in turn, would distribute it to the drug
22 customer. After telling Duque that he needed a ride to conduct
23 an illegal methamphetamine transaction, Duque agreed to and did
24 use his vehicle to drive the defendant to the meeting location.

25 At the meeting location, the defendant, Duque and the

1 drug customer waited in Duque's vehicle for Dias to arrive with
2 the methamphetamine. While waiting in Duque's vehicle, all
3 three men discussed the purpose of the meeting, including how
4 to assess the quality of methamphetamine and the profit one can
5 make by trafficking methamphetamine.

6 After Dias arrived at the meeting location in his
7 vehicle, the defendant exited Duque's vehicle, entered Dias's
8 vehicle, obtained the methamphetamine from Dias, and then
9 returned to Duque's vehicle, where he then handed the
10 methamphetamine to the drug customer, in Duque's presence,
11 inside Duque's vehicle.

12 The drug customer provided the defendant with \$6,500
13 for the methamphetamine in Duque's presence.

14 On or about June 15th, 2021, the defendant agreed
15 with his coconspirator Kaniela Perez to distribute
16 approximately 866 grams, actual, of methamphetamine to a drug
17 customer on Oahu. Perez and the defendant agreed that Perez
18 would supply the methamphetamine for the transaction. Pursuant
19 to that agreement, the defendant drove his vehicle to pick up
20 Perez in a parking lot. Perez and the defendant then drove
21 together in the defendant's vehicle to a meeting location.
22 There, the defendant met the drug customer, who fronted \$15,000
23 to the defendant. The defendant then returned to his vehicle
24 and provided the \$15,000 to Perez.

25 Shortly thereafter, at a nearby location, Perez

1 exited the defendant's vehicle and entered a vehicle driven by
2 Perez's methamphetamine supplier and obtained from that
3 supplier the methamphetamine for the defendant's drug customer.
4 The defendant and Perez, who was then carrying approximately
5 three pounds of methamphetamine, entered the drug customer's
6 vehicle and provided approximately two pounds, i.e.,
7 approximately 866 grams, actual, of methamphetamine to the drug
8 customer.

9 Those are the facts the government would prove beyond
10 a reasonable doubt at trial, Your Honor.

11 THE COURT: Thank you.

12 Mr. Young, were you reading along and listening to
13 Mr. Myers?

14 THE DEFENDANT: Yes.

15 THE COURT: Is everything that he said true?

16 THE DEFENDANT: Yes.

17 THE COURT: Is anything incorrect or untrue?

18 THE DEFENDANT: No.

19 THE COURT: Can you tell me in your own words what
20 makes you guilty of this crime?

21 THE DEFENDANT: I know I sold the metham -- I mean, I
22 got the methamphetamine from somebody and sold it to the
23 customer.

24 THE COURT: And did you have an agreement with
25 others, your coconspirators named in the indictment, to do

1 this?

2 THE DEFENDANT: Yes.

3 THE COURT: And was this a conspiracy that lasted
4 from at least September 2020 through at least July 2021?

5 THE DEFENDANT: Yes.

6 THE COURT: And at all times did you know that what
7 you were distributing and agreeing to distribute was
8 methamphetamine?

9 THE DEFENDANT: Yes.

10 THE COURT: Thank you.

11 Mr. Myers, any other questions you'd like me to ask?

12 MR. MYERS: No, Your Honor. Thank you.

13 THE COURT: So next, Mr. Foster, I'm going to talk to
14 you a little bit about sentencing. United States law
15 establishes detailed sentencing guidelines which specify ranges
16 of sentence for people convicted of federal crimes. Now, these
17 ranges are advisory only, so I'm not required to follow them,
18 but I am required to consider them at the time of sentencing.

19 I'm also required to consider factors in a law known
20 as 18 United States Code section 3553. Some of those factors
21 include things like the nature and circumstances of this
22 offense, your history and characteristics, the need for just
23 punishment, and other things.

24 Have you and Ms. Gutierrez talked about how the
25 guidelines might apply in your case?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that I will not be able
3 to determine the guidelines for your case until after a
4 presentence report has been completed and you and your lawyer
5 have had an opportunity to object to it?

6 THE DEFENDANT: Yes.

7 THE COURT: The plea agreement contains certain
8 stipulations regarding sentencing. Do you understand those
9 stipulations?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that I can reject those
12 stipulations?

13 THE DEFENDANT: Yes.

14 THE COURT: After I have determined what the
15 guidelines is and after I consider all of the factors in that
16 statute or that law I mentioned a moment ago, do you understand
17 that I can impose a sentence that is more severe or less severe
18 than the guideline range?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that if the sentence is
21 more severe than expected, you will not be allowed to withdraw
22 your guilty plea?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that any discussions
25 you've had with Ms. Gutierrez regarding the type of sentence

1 you may receive and any recommendation you or she or Mr. Myers
2 makes at sentencing are not binding on me?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand --

5 THE DEFENDANT: Yes. Yes.

6 THE COURT: Do you understand that at sentencing I
7 could in fact sentence you to the maximum allowed by law?

8 THE DEFENDANT: Yes.

9 THE COURT: Has anyone promised you what your
10 sentence will be?

11 THE DEFENDANT: No.

12 THE COURT: There's no limitation on the information
13 that I can consider at the time of sentencing concerning your
14 background, character, and conduct, as long as the information
15 provided to me is sufficiently reliable. Do you understand
16 that?

17 THE DEFENDANT: Yes.

18 THE COURT: If you are sentenced to prison, a term of
19 supervised release may follow, and you could be given
20 additional time in prison if you violate the terms of
21 supervised release. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: There is no such thing as parole in the
24 federal system; and if you are sentenced to prison, you will
25 not be released on early parole. Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: The plea agreement contains an appeal
3 waiver outlining your appeal rights that you're giving up, at
4 paragraph 13. Have you had an opportunity to read that waiver
5 with your lawyer?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that you're knowingly
8 waiving your right to appeal or challenge your conviction and
9 sentencing except as indicated in the language of that waiver?

10 THE DEFENDANT: Yes.

11 THE COURT: That waiver states that you may appeal
12 any sentence greater than the guideline range that I determine
13 at the time of sentencing, but only that portion that is
14 greater than the guideline range. In other words, if I
15 sentence you to two months greater than the guidelines range,
16 you can only appeal up -- that two-month additional sentence.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that the government is
20 not forfeiting its right to appeal the sentence in this case?

21 THE DEFENDANT: Yes.

22 THE COURT: Have you read and adopted the financial
23 disclosure requirements at paragraph 14?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. Paragraph 15 contains a forfeiture

1 paragraph -- language, which says that you are giving up all of
2 your right, title, and interest to the following property: A
3 silver Ford F-250 bearing Hawaii registration RGN351 and a 2016
4 white Mercedes-Benz sedan bearing Hawaii registration SFS888.

5 Are you agreeing to forfeit your rights to both?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you also understand that you're
8 consenting to the entry of a money judgment in the amount of
9 \$24,000 -- \$24,100?

10 THE DEFENDANT: Yes.

11 THE COURT: And by agreeing to all of this, you're
12 giving up your right to challenge any of these forfeitures on
13 constitutional grounds, including that it might constitute
14 excessive fine or punishment under the Eighth Amendment; do you
15 understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: I'm now going to talk to you about the
18 rights that you're giving up, the trial rights that you're
19 giving up by pleading guilty today.

20 Under the Constitution and Laws of the United States,
21 you have a right to persist in your plea of not guilty and are
22 entitled to a trial by jury on the charges against you. Do you
23 understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: At trial you would be presumed to be

1 innocent, and the government would have the burden of
2 presenting evidence to prove your guilt beyond a reasonable
3 doubt, and at no time would you have to prove that you are not
4 guilty. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: To be found guilty at a trial, a jury of
7 12 people would have to all agree that you are guilty beyond a
8 reasonable doubt. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: At all stages of the prosecution,
11 including trial, you would have the right to assistance of
12 counsel in your defense; and if you couldn't afford a lawyer,
13 one would be appointed for you. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: At trial you would have the right to see
16 and hear all the government witnesses and have them questioned
17 by your lawyer. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: You could object to evidence offered by
20 the government and offer evidence on your own behalf, and you
21 could compel witnesses to testify. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: You would have the right to testify if
24 you chose to do so, but you'd also have the right to remain
25 silent, and the jurors could not draw any conclusions that you

1 are guilty because you remained silent. Do you understand
2 that?

3 THE DEFENDANT: Yes.

4 THE COURT: By entering a plea of guilty, and if I
5 accept your plea, there will be no trial and you will have
6 waived or given up your right to trial, as all of the other
7 rights we've already gone over. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: If you plead guilty, you will also give
10 up your right not to incriminate yourself because at sentencing
11 I may in fact ask you some questions about why you committed
12 this crime. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you have any questions about any of
15 these rights?

16 THE DEFENDANT: No.

17 THE COURT: Knowing these rights, do you still wish
18 to plead guilty today?

19 THE DEFENDANT: Yes.

20 THE COURT: The plea agreement also contains, at
21 paragraph 20, what happens if at the end of this hearing you
22 choose to plead not guilty and/or if after this hearing is over
23 you attempt to withdraw this guilty plea.

24 Have you read that paragraph and understand what it
25 means?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay. I'm going to now talk about the
3 paragraph beginning at page 22. I'm not going to read that to
4 you, but I have some questions about your cooperation with the
5 government.

6 Are you agreeing to fully cooperate with the United
7 States?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that you are agreeing
10 to testify truthfully at any trials or hearings at which the
11 prosecution asks you to testify?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you agree to make yourself available
14 to speak to law enforcement and members of the U.S. Attorney's
15 office at any time and to give truthful answers to their
16 questions?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you agree that you will not invoke the
19 right to not testify at any hearing related to the crimes
20 charged in this indictment or any related investigation?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you agree that your sentencing date
23 may be delayed based on the government's need for your
24 continued cooperation?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand that the prosecution
2 may, but is not required to, ask the Court to sentence you to a
3 term below your guidelines range in exchange for your
4 cooperation?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you also understand that it is
7 entirely up to the prosecution whether or not to make that
8 motion, and they're not stating in this agreement that they
9 promise to do so?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you also understand that even if the
12 prosecution makes that motion and asks me to sentence you to a
13 term below your guidelines range, I could reject that request?
14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: I could also choose not to give you as
17 much of a break as they are asking me to do. Do you understand
18 that?

19 THE DEFENDANT: Yes.

20 THE COURT: All right, then. I -- now is the time
21 officially, Mr. Foster, for me to ask you: As to the
22 indictment's charge of Count 1, conspiracy to distribute and
23 possess with intent to distribute methamphetamine, in violation
24 of 21 U.S.C. section 846, how do you plead, guilty or not
25 guilty?

1 THE DEFENDANT: Guilty.

2 THE COURT: I find, Mr. Foster, that you are
3 competent to understand the proceedings and to enter a knowing
4 and informed plea, that you understand the charge to which you
5 are pleading guilty, that you are entering a knowing and
6 voluntary plea and not entering the plea because of any force
7 or threat, and you are not entering the plea because of any
8 promise other than what is in the plea agreement.

9 The plea of guilty is supported by an independent
10 basis in fact containing each of the essential elements of the
11 offense. I find that you know all of your rights associated
12 with trial and that you understand the guidelines and the other
13 factors that I must consider when imposing punishment.

14 And as you have acknowledged you are in fact guilty,
15 I accept your guilty plea and you're now adjudged guilty of the
16 offense.

17 I have filed this plea agreement, but I reserve
18 determination of whether or not to accept the plea agreement
19 until after a presentence report has been prepared.

20 Let me ask for a sentencing date.

21 COURTROOM MANAGER: Yes, Your Honor. January 17th,
22 2024, at 9:00 o'clock a.m.

23 THE COURT: All right. Does that work for everyone?

24 MR. MYERS: It does, Your Honor.

25 MS. GUTIERREZ: Yes. Thank you.

1 THE COURT: Okay. So Mr. Foster, I apologize if I
2 might have called you Mr. Young a moment ago. But let me talk
3 to you a little bit about what happens next.

4 I assume, Mr. Myers, you are not asking that he be
5 remanded?

6 MR. MYERS: We are not.

7 THE COURT: Okay. So I find by clear and convincing
8 evidence that you are not a current threat to the public safety
9 or a risk of flight.

10 I looked through what Pretrial Services is doing for
11 you. I see that you are taking drug tests and that you are
12 testing negative. Continue with the good work there.

13 If you fail to show up for sentencing, that's a huge
14 problem, right? That's something I will count against you at
15 your eventual sentencing, and you could potentially also risk a
16 new charge.

17 In the meantime, you should have or will have shortly
18 some pamphlets from U.S. Probation to explain to you what you
19 can expect next.

20 I am requiring you to meet with the U.S. Probation
21 office for an interview for the presentence report.
22 Ms. Gutierrez can attend that meeting.

23 The other thing that I tell all defendants is that at
24 the time of sentencing the only thing I know about you is
25 what's been given to me in the presentence report, what the

1 government submits, and what your lawyer submits.

2 So if you want to write a letter to me ahead of time
3 to include in your sentencing materials, or have other people
4 write letters, or if you want to say something at sentencing so
5 that I have a better understanding of who you are, I invite you
6 to do that.

7 I warn you that there are occasions where some
8 defendants hurt themselves by what they say, either in their
9 letter or in court. So work with Ms. Gutierrez on what it is
10 you want to say, if anything. And I won't hold it against you
11 either if there's nothing that you wish to say.

12 All right. Mr. Myers, did I miss anything?

13 MR. MYERS: You did not, Your Honor.

14 THE COURT: Okay, thank you.

15 Ms. Gutierrez, anything that I missed?

16 MS. GUTIERREZ: No, Your Honor. Thank you.

17 THE COURT: All right.

18 Okay. So Mr. Foster, continue, like I said, to test
19 negative. Continue to do what you're doing with Pretrial.
20 Even though I know their supervision of you isn't very robust,
21 I will make note of whether or not you are complying with all
22 conditions at the time of sentencing. And we'll see you in
23 January.

24 THE DEFENDANT: All right. Thank you.

25 THE COURT: Thank you. We are adjourned.

1 COURTROOM MANAGER: All rise.

2 Court is now adjourned.

3 (The proceedings concluded at 10:09 a.m.,

4 September 8, 2023.)

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COURT REPORTER'S CERTIFICATE

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I, Ann B. Matsumoto, official Court Reporter, United States District Court, District of Hawaii, do hereby certify that pursuant to 28 U.S.C. Sec. 753 the foregoing is a complete, true, and correct transcript of the stenographically recorded proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

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DATED at Honolulu, Hawaii, September 20, 2023.

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/s/ Ann B. Matsumoto

ANN B. MATSUMOTO, RPR

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